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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re: GIGA WATT, Inc., a Washington corporation, Debtor.	Case No. 2:18-bk-3197 The Honorable Frederick P. Corbit Chapter 7
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MARK D. WALDRON, as Chapter 7 Trustee, Plaintiff, vs. PERKINS COIE LLP, a Washington limited liability partnership, <i>et al.</i> , Defendants, - and - THE GIGA WATT PROJECT, a partnership, Nominal Defendant.	Case No. 2:20-ap-80031 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR DETERMINATION THAT PROCEEDING IS CORE
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Memorandum of Points and
Authorities in Support of
Motion for Core Determination

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STATUTES

11 U.S.C. § 553	3
28 U.S.C. § 157	1, 2, 3

1 Mark D. Waldron, in his capacity as the duly-appointed Chapter 7 Trustee,
2 by and through his attorneys, hereby respectfully submits this memorandum in
3 support of the Plaintiff's motion, filed herewith, for a determination that the
4 above-captioned adversary proceeding is core. The Trustee incorporates by
5 reference as if set forth fully herein all the facts and arguments asserted in the
6 Memorandum in Support of Plaintiff's Motion to Strike Jury Demand, filed
7 herewith.

8 I. INTRODUCTION

9 In its Answer and Affirmative Defenses, AP ECF No. 28, Perkins Coie
10 denies fault with respect to the misappropriated escrow, alleges that Giga Watt is
11 to blame, questions the Trustee's judgment, and asserts the right to "any and all
12 damages" from Giga Watt should Perkins Coie be found liable to anyone with
13 respect to the escrow. These affirmative defenses make the above-captioned
14 adversary proceeding core because they cannot be resolved without resolving the
15 Trustee's Complaint, AP ECF No. 6,11.

16 II. POINTS AND AUTHORITIES

17 As an initial matter, the Bankruptcy Court has the power to decide whether
18 a matter is core or not core. 28 U.S.C. § 157(b)(3). "A determination that a
19 proceeding is not a core proceeding shall not be made solely on the basis that its
20 resolution may be affected by State law." *Id.*

21 The U.S. Supreme Court decision in *Stern v. Marshall* sets the groundwork
22 for the core determination in this adversary proceeding. *Stern* held that a debtor's

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1 counterclaim against a creditor who had filed a proof of claim in the debtor's
2 bankruptcy was statutorily core pursuant to 28 U.S.C. § 157; but it was not
3 constitutionally core. Therefore, the bankruptcy court's judgment on the debtor's
4 counterclaim was not final. *Stern v. Marshall*, 131 S.Ct. 2594, 564 U.S. 462
5 (2011). Justice Scalia, who wrote the majority opinion, described the issue
6 presented as "narrow." *Id.*, 131 S.Ct. at 2620, 564 U.S. 462 at 502 (2011)
7 (quotations in original). *Cf. Kriegman v. Cilwa (In re LLS America, LLC)*, No.
8 CV-12-340-RMP, 2012 WL 5285654, at *2 (E.D. Wash. October 25, 2012)
9 (citations omitted) (observing that in *Stern* the debtor's claim against the creditor
10 was "sufficiently distinct from the issues raised in the counter-defendant's proof of
11 claim that resolution of the proof of claim would not resolve the entirety of the
12 counterclaim").

13 Prior to *Stern*, courts held that a defendant's filing of a claim or assertion of
14 setoff turned the debtor's non-core claims against that creditor into an entire
15 adversary proceeding core. *See e.g., Statutory Committee of Unsecured Creditors*
16 *v. Motorola, Inc. (In re Iridium Operating LLC)*, 285 B.R. 822, 831 (Bankr.
17 S.D.N.Y. 2002) ("[T]he Second Circuit and courts in this district have consistently
18 held adversary proceedings against a creditor that have traditionally been non-core
19 to be core pursuant to [28 U.S.C.] § 157(b)(2)(B) & (C) due to the filing of a proof
20 of claim or counterclaim of setoff/recoupment by that creditor."); *Commercial*
21 *Financial Services, Inc. v. Jones (In re Commercial Financial Services, Inc.)*, 251
22 B.R. 397 (Bankr. N.D. Okla. 2000) (holding that court had core jurisdiction over

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1 plaintiff's non-core breach of contract claim based on defendant's setoff defense).
2 Even a broad reading of *Stern*'s "narrow" issue, would not disrupt these holdings
3 because setoff by its nature keys off of other claims and cannot be resolved
4 without resolving those other claims.

5 Indeed, under a broad reading of *Stern*, the analysis in this case turns on
6 whether or not Perkins Coie's setoff and claims of impropriety could be resolved
7 without resolving the Complaint's allegations. As set forth below, the answer is
8 no. Therefore, this adversary proceeding is core.

9 **A. Perkins Coie's Setoff and Claims of Impropriety Cannot Be Resolved**
10 **Without Resolving the Complaint**

11 Perkins Coie affirmatively alleges that if it is held liable to anyone with
12 respect to the escrow, then it should be entitled to setoff of any claims owed to the
13 estate.¹ Setoff triggers the claims allowance process and is, therefore, core. 11
14 U.S.C. § 553; 28 U.S.C. § 157(b)(2)(B). Perkins Coie further alleges that the
15 Trustee has failed to mitigate damages and that his filing of the Complaint was
16 improper.² This allegation is core pursuant to 28 U.S.C. § 157(b)(2)(A). "[O]nly a
17 Bankruptcy Court should decide whether the manner in which someone has
18 administered a bankruptcy estate gives rise to a claim for damages." *In re Thorpe*
19 *Insulation Co.*, 671 F.3d 1011, 1022 (9th Cir. 2012).

20
21 _____
22 ¹ PC Ans. and Aff. Defs., 14:10-26, 15:1-12, AP ECF No. 28.

23 ² *Id.*, 18:13-20.

The core allegations of setoff and impropriety cannot be resolved without resolving the Complaint. There is no setoff without a claim. And proving the Complaint's allegations will necessarily defeat the claim of impropriety. Therefore, this adversary proceeding is core.

III. CONCLUSION

Wherefore, the Trustee respectfully requests that the Court determine that the above-captioned adversary proceeding is core and grant such other relief as it deems appropriate and just.

Dated: February 5, 2021

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